# AC

## Overview [:55]

First, affirming is harder so presume aff in the absence of offense because it proves I’m the better debater. Last year affs won over 7% fewer rounds[[1]](#footnote-1) out of a sample of 12,000 rounds from octos and quarters bids. Prefer stats because they determine the validity of analytics in the real world. This also means that all neg theory must be weighed against side bias because absent weighing between the two the aff abuse is just fairly rectifying for the side bias.

Second, accept textual aff definitions. **A.** there are multiple interps of the topic and the neg is reactive to the aff, so they can always be prepared to debate under it **B.** as long as there’s ability for neg to win under an interpretation then it allows for fair clash and **C.** the neg can always call for alternate definitions, killing topic discussion because negs are incentivized to always layer the case debate with T and skews time because 1AR’s are always forced to restart.

Third, if jury nullification is permissible, affirm because the resolution says jury nullification ought to be used which means that it is obligatory that a state of affairs exist such that jury nullification can be used so permissibility affirms.

Fourth, every statement including the resolution includes implicit assumptions, which means the res can be rephrased as a conditional statement for any one of these functioning as the antecedent. Denying the resolution’s assumptions is denying its antecedents, which affirms by logicians’ consensus. Stanford Philosophy[[2]](#footnote-2),

Conditional statement: an “if p, then q” compound statement (ex. If I throw this ball into the air, it will come down); p is called the antecedent, and q is the consequent.  A conditional asserts that if its antecedent is true, its consequent is also true; any conditional [statement] with a true antecedent and a false consequent must be false.  For any other combination of **true** and false antecedents and consequents, the conditional statement is true.

At best denying assumptions of the resolution triggers presumption because once a statement makes no sense due to its premises being false it’s just incoherent.

Fifth, to affirm means “**to say that something is true.**”[[3]](#footnote-3) To negate means **“to deny the truth of”** which impliestruth testing is the only paradigm consistent with textuality, which means it is the only paradigm you have jurisdiction to use since when you sign the ballot you are saying the better debating was done by the aff.

Sixth, google defines injustice as something not based on or behaving according to what is morally right and fair.

Next, framework.

## T-ought [1:40]

Ought to is defined as functionally being supposed to do something based on the factual nature of the agent. **Macintyre:**

Alasdair MacIntyre, [After Virtue](http://www.amazon.com/After-Virtue-Study-Moral-Theory/dp/0268035040/), 1981

Yet in fact the alleged unrestrictedly general logical principle on which everything is being made to depend is bogus- and the scholastic tag applies only to Aristotelian syllogisms. There are several types of valid arguments in which some element may appear in a conclusion which is not present in the premises. A.N. Prior’s counter-example to this illustrates its breakdown adequately; **from** the premise **‘He is a sea captain’; the conclusion may be** validly **inferred that ‘He ought to do whatever a sea-captain ought to do’.** This counter-example not only shows that there is no general principle of the type alleged; but **it** itself **shows** what is at least **a grammatical truth—an ‘is’ premise can** on occasion **entail an ‘ought’ conclusion. From** such factual premises as **‘This watch is** grossly **inaccurate** and irregular in time-keeping’ and ‘This watch is too heavy to carry about comfortably’, **the** evaluative **conclusion** validly **follows that ‘This is a bad watch’.** From such factual premises as ‘He gets a better yield for this crop per acre than any farmer in the district’, ‘He has the most effective programme of soil renewal yet known’ and ‘His dairy herd wins all the first prizes at the agricultural shows’, the evaluative conclusion validly follows that ‘He is a good farmer’. Both of these arguments are valid because of the special character of the concepts of a watch and of a farmer. Such concepts are functional concepts; that is to say, **we define** both **‘watch’** and ‘farmer’ **in terms of** purpose of **function** which a watch or a farmer are characteristically expected to serve. It follows that the concept of **a watch cannot be defined independently of the concept of a good watch** nor the concept of a farmer independently of that of a good farmer; and that the criterion of something’s being a watch and the criterion of something’s being a good watch.

And the function of action in the U.S. is consistency with the Constitution, the supreme law of the land, **The White House:**

**“The Constitution** of the United States of America **is the supreme law of the U**nited **S**tates. **Empowered with the** sovereign **authority of the people** by the framers **and the consent of the** legislatures of the **states, it is the source of all government powers, and** also provides important **limitations** on the government that protect the fundamental rights of United States citizens.

Madison agrees:

The constitution

**This Constitution,** and the Laws of the United States which shall bemade in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, **shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution** or laws of any state to the contrary notwithstanding.

Thus, ought implies consistency with the constitution.

Reasons to prefer – 1. Real world education – ought statements for legal fictions or institutions refer to functionality since we create them and thus decide what they do, so my interp key to real world understanding of obligations. Also, legal education comes first because everyone needs to know how the law works in order to live in the U.S. It also outweighs because, debaters become lawyers in huge numbers, 40% of debaters who think about their careers’ plan to be lawyers**[[4]](#footnote-4)**; **Crotty:**[[5]](#footnote-5)

Given this backdrop, it is no surprise that many former policy debaters become successful lawyers. Notable among these are David Boies (of Bush V. Gore fame), Justice Samuel Alito, and Justice Stephen Breyer. In my own circle of friends, I include several former high school debate partners or team members who went on to successful legal careers, including Yale Law school grad — and former Senior Legal Adviser in the Clinton State Department — James C. O’Brien, principal author of the Bosnian constitution.

Even if philosophy is good I outweigh **A.** we always have the same util vs. deont debate on any resolution, my interp lets us actually talk about the topic **B.** framework debates in LD have devolved into blippy assertions alongside triggers that bastardize the literature and prevent real philosophical discussion.

2. Debatability – philosophy is irresolvable since no moral obligations can be objectively grounded **A.** any moral principle requires a justification, and a justification for the justification, and so on, so debates about morality are either inevaluable infinite logical regressions or just unweighable assertions of principles **B.** these claims have been argued for thousands of years so 45 minutes is unlikely to lead us anywhere **C.** moral claims establish rules for actions. But, for any rule, we need a rule to know how to interpret the rule, i.e., when I point my finger there’s no non arbitrary way to decide if I am pointing in the direction of wrist to fingertip or from fingertip to wrist. This means rules are infiniteable interpretable, undermining morality. Debatability is key to fairness and outweighs other links because the judge can’t decide fairly if the judge can’t decide at all, also key to being able to clash.

3. Reciprocity- under my interp the burdens are 1-1 and reciprocal, the aff proves the resolution is consistent with legality and the neg proves it’s inconsistent. We don’t have to worry about who gets skep ground or other issues that create strategy skews and detract from education.

But even if I lose the T-interp, the standard is still consistency with the constitution.

## No agency [:40]

*And, even if they win that ought does not equal function,* traditional ethics fail in the context of groups of agents acting, such as government **A.** Groups include many different individuals, making it impossible to regard them as a morally accountable agent because that would require holding each individual responsible, even if they did not contribute to the action itself **B.** aggregate agents can be combined and broken up, for example the division and re-unification of the German government post-WWII, but people can’t be combined or broken up, so states have no comparable moral agency and **C.** They don’t have the ability for internal motivation or self-reflection, which means that traditional ethical theories have no normative force.  Gerson:

Having said this, I still think that the argument that seeks to include nations within the class of moral agents on the basis of intentionality is a weak one. Here is why. There is an ambiguity in the term “intentionality” that this argument exploits. **In the sense in which nations have intentionality, the attribution of moral agency does not follow.** In the sense of intentionality according to which moral agency does follow, this argument does not show that nations have that. **Intentionality** in the first sense **can characterize any goal-directed behavior** and can also be applied to any behavior that is understandable in the light of that goal. For example, it is perfectly reasonable to say that a squirrel is gathering nuts for the purpose of eating throughout the winter, or that the rattle of the snake’s tail shows that it intends to strike, or that the field mouse is trying to get into the house in the  autumn in order to keep warm, or that the chess-playing robot is trying to pin down my knight. **But the sense of intentionality** that applies to such goal-directed behavior by agents obviously does not indicate *moral* agency. Intentionality in the second sense, the sense **according to which its applicability *does* imply moral agency,** is something else. In this sense, intentionality **refers** first and foremost **to the self-awareness of** the presence of **the purpose** and the self-awareness **of the mental states leading to its realization. That is,** of course, **precisely why we refrain from claiming that someone is responsible for her actions when she is *unaware* of what she is doing.”**

Only a functional notion of ought solves because you do not need unified intentional agency in order to have a function, for example a spoon’s function is feeding though it’s not conscious.

## Practice rules [:35]

**Moreover**, even if ought is moral, “ought” statement inside a set of institutional rules requires mere reference to the rules themselves – the “practice rules” – which specify notions of right and wrong prior to the evaluation of more general rules.  Schapiro[[6]](#footnote-6):

In his early article, “Two Concepts of Rules,” Rawls sets out to limit the scope of the utilitarian principle by arguing that it is inapplicable to actions of a certain type.25 His claim is that actions which fall under practice rules, for example actions governed by the rules of games and social institutions, have a structure which is different from the structure of action presupposed by utilitarianism. Such actions are not, therefore, directly subject to utilitarian evaluation. Whereas a practice as a whole can be judged in terms of its overall consequences, Rawls claims, **a** particular **move within a practice can only be judged in relation to the practice rules.** Rawls’ argument turns on a conceptual point about the relation between the rules of a practice and the cases to which they are applied**. Practice rules**, he claims, **are “logically prior”** to particular cases **[since].**  [“]In a practice there are rules setting up offices, specifying certain forms of action appropriate to various offices, establishing penalties for the breach of rules, and so on. We may think of the rules of a practice as defining offices, moves, and offenses. Now what is meant by saying that the practice is logically prior to particular cases is this: **[“]given any rule which specifies a form of action** (a move), **a particular** **action** which would be taken as falling **under this rule given that there is the practice would not be described as that sort of action unless there was the practice**.[”] Rawls illustrates the logical priority of practice rules over actions with reference to moves [I]n the game of American baseball.27 [**For example,] [o]utside the** “stage-setting” of **the game [of baseball], it is** certainly possible to “throw a ball, run, or swing a peculiarly shaped piece of wood.” But it is **impossible to “steal [a] base, or strike out**, or draw a walk, or make an error, or balk.” 28 **Where the rules of baseball are in force, movements come to constitute moves** of particular kinds, **and** conversely **in the absence of such rules, actions** which might appear to be moves **are** properly described as **mere movements. In this respect**, Rawls claims, practice rules differ from another general class of rules called “summary rules.” Summary rules [which] are “rules of thumb.” Their role is to allow ` us to approximate the results of applying some more precise but perhaps more unwieldy principle to particular cases [and therefore] . As such, summary rules are arrived at by generalizing the results of the prior procedure. They are “reports” of these results, presented as guides for deliberating about what to do in cases which are relevantly similar to those used to generate the reports. Summary rules are therefore logically posterior to the cases to which they apply. [f]or in order to specify a summary rule, it is necessary to generalize over some range of cases, and the relevant descriptions of these cases must be given in advance if generalization over them is to be possible. Whereas summary rules presuppose the existence of a well-defined context of application, the establishment of **a practice imposes a new** conceptual and **normative structure on the context to which they are to apply**. In this sense, a practice amounts to “the specification of a new form of activity,” along with a new order of status relations in which that activity makes sense.29 From the point of view of a participant, the establishment of a practice transforms an expanse of grass into “playing field,” bags on the ground into “bases,” and individuals into occupants of determinate “positions.” Universal laws come to hold a priori, for example that “three strikes make an out,” and that “every inning has a top and a bottom.” And within that new order people come to have special powers, such as the power to “strike out,” or to “steal a base.”  The salient point for Rawls’ purposes is that there are constitutive constraints on the exercise of these new powers, constraints by which any participant must abide in order to make her movements count as the moves she intends them to be.

Since what it means to “jury nullify” is contextual to being within the practice of the U.S. criminal justice system, going against the broader practice rules, i.e. the Constitution, undermines what the action of the resolution even means.

## I contend the constitution affirms [:47]

First, jury nullification is grounded in the explicit text of the sixth amendment – Supreme Court agrees, and systems of law are based around this notion, **Duane:**

“Jury Nullification: The Top Secret Constitutional Right” James Joseph Duane 1996 Litigation 6-60 http://www.constitution.org/2ll/2ndschol/131jur.pdf

Despite all the modern government resentment toward "jury nullification," its roots run deep in both our history and law. At least two provisions of the Constitution, and arguably three, protect the jury's power to nullify. They also explain why that power is limited to criminal cases, and has no analogy in the civil context. First, it is reflected in **the Sixth Amendment,** which **grants** the accused **an inviolable right to a jury determination of** his **guilt or innocence in all criminal prosecutions** for serious offenses. Because of this right, **a trial judge** absolutely **cannot** direct a verdict in favor of the State or **set aside a jury's verdict** of not guilty, **"no matter how overwhelming the evidence."** Sullivan v. Louisiana, 508 U.S. 275, 277 (1993). Any violation of this rule is automatically reversible error without regard to the evidence of guilt. Id. Indeed, **the point is so well settled that it was announced without dissent in Sullivan by a Court** that has been **unanimous on only a few** constitutional **questions** in the past ten years. This rule is applied with a rigor that is without parallel in any area of civil practice. For example, it is reversible error to direct a verdict of guilty over the defendant's objection, even if he takes the witness stand and admits under oath that he committed every element of the charged offense! Bryant v. Georgia, 163 Ga. App. 872, 296 S.E.2d 168 (Ga. Ct. App. 1982). (Although one might fairly describe that particular defense strategy as a questionable use of direct examination.) Likewise, when a judge takes judicial notice of a fact in a criminal case—for example, that the defendant could not have boarded a train in New York and exited in Texas without somehow crossing state lines—he will tell the jury they "may" accept that fact as proven without further evidence. But he may not tell them that they are required to do so, or take the factual question away from them, no matter how obvious the fact might seem. See Advisory Committee Notes to Fed. R. Evid. 201(g). Even where the defendant and his attorney enter into a formal stipulation admitting an element of the offense, the jury should be told merely that they may regard the matter to be "proved," if they wish, but the judge still cannot direct a verdict on that factual issue or take it away from the jury over the defendant's objection. United States v. Muse, 83 F.3d 672, 679-80 (4th Cir. 1996). All of these **rules are designed**, in part, **to protect the jury's inviolable power to nullify** and to avoid the reversible error always committed when "the wrong entity judge[s] the defendant guilty." Rose v. Clark, 478 U.S. 570, 578 (1986).

Outweighs – **A.** Duane says rules have been shaped around protecting the jury’s power to nullify, means that the criminal justice system facilitates nullification and has defined its function around that premise **B.** explicitness – the sixth amendment literally affirms, not via some round about inference and **C.** huge Supreme Court consensus, and they are constitutionally the interpreters of the document.

Second, both history and current Supreme Court opinion agree that jury nullification is a key recourse against oppressive government, **Freedman**:

Monroe H., former prof and dean @ Hofstra Law School, visiting prof @ Georgetown, a pioneer in legal ethics, chair of a ACLU chapter, LLM from Harvard Law, “Jury Nullification: What it is and how to do it ethically,” 42 Hofstra L. Rev. 1125 2013-2014 [Premier, Premier Debate Today, Sign-Up Now]

Moreover, Federal District Judge Jack Weinstein has shown that **in recent years "[t]he Supreme Court has recognized that the jury has a significant role in determining punishment.** 'A9 These decisions, Weinstein noted, have reaffirmed three propositions that support entrusting jurors with knowledge of their power of nullification. First, the fundamental right of jury trial "provides a check on the courts equivalent to that of the voter on elected officials."51 Second, in interpreting the Sixth Amendment, the Court relies on criminal practice existing when the Constitution was adopted.12 Third, the Court is willing to overturn long-established holdings that are based on erroneous interpretations of the Constitution.1 C. Current Indications from the Supreme Court54 Illustrating Judge Weinstein's analysis, the Supreme Court held in Apprendi v. New Jersey5 5 that the right to **trial by jury is** meant to "guard against a spirit of oppression and tyranny on the part of rulers" and is "**the great bulwark of [our] civil and political liberties.** ' 6 And in Blakely v. Washington,57 the Court similarly recognized that the right to jury trial "is no mere procedural formality, but a fundamental reservation of power in our constitutional structure. Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary. 5 8 More recently, in a Senate Judiciary Committee hearing, 59 **Justice** Antonin **Scalia explained** that: **"The jury is a check on** us. It is a check on the judges. I think the framers were not willing to trust the judges to find the facts. 6° Indeed, Scalia added, "when the Constitution was ratified, juries used to find not only the facts but the law. And this was a way of reducing the power of the judges to condemn somebody to prison., 61 Most significantly, Scalia went on to say, "[s]o it absolutely is a structural guarantee of the Constitution., 62 Justice Stephen Breyer agreed with Scalia: "Yes, I think it is very important.... [T]hey are not just a fact-finding machine. 63 Rather, the jury is an "application of community power.' 64 Senator Sheldon Whitehouse then added: "I wonder if the stature of the jury in the architecture of American Government could not just be as a check on judges, but also as sort of the last bastion when somebody who is put upon or set upon by... political forces that most lend themselves to corruption," such as elected officials.65 Instead, they might get before a random group of their peers, creating not just a check on judges, but also "on all of us and the rest of the system of Government?" 66 Agreeing with Senator Whitehouse, Scalia responded: "Well, I think that is probably right .... And that makes them a check **not just** on the **judges but, of course, on the legislature that enacted the law** to apply in this particular situation." And he added, significantly, "I am a big fan of the jury, and I think our Court is, too. 6 7 Of course, it is pointless for a jury to have **this fundamental power** if it **is** kept in ignorance that it exists. There is reason for hope, therefore, that the Supreme Court would reverse a conviction in which a trial judge refused to inform the jury of **its power of nullification** or forbade a defense lawyer to do so

Outweighs – it’s a necessary tool to preserve our other constitutional rights and freedoms, so it precludes them by virtue of being a prerequisite.

Underview

1.Redefine the aff under neg T or theory as **A.** competing mutually exclusive interps make it possible for the neg to read theory every round because the aff enters blind **B.** time skew makes it so that it impossible to win theory and substance in the 1AR. Re-evaluating my offense under their interp solves by bringing the round to one layer **C.** T interps are just paradigms for how we debate the res so winning one isn’t a reason to exclude my offense if it still is applicable. Also means drop the neg on my theory since I can’t beat back an abusive NC strategy if I need to win theory and then substance too.

2. Wrong means **not in accordance with what is** morally **right** or good: which means proving something isn’t wrong, i.e. permissible, means it’s right and thus obligatory because we ought to do the right thing.

3. The neg may not indict the aff’s ability to read spikes. **A.** strat skew – either I read the interps as AC spikes subjecting myself to preclusive theory or I can only read them in the 1AR meaning my only option is a 1AR restart meaning I always lose 6 minutes when the round goes to theory **B.** resolvability – neg theory indicting spikes would indict this but this spike is already indicting that theory, so to prevent an irresolvable round that precludes any fair decision, now that I’ve introduced this spike neg may not indict spikes with theory.

4. The neg may only have one unconditional access to the ballot. Key to aff strategy since any other interp allows the neg to set up conditional routes to the ballot forcing me to engage all of them. The 2NR becomes much easier since they could go for any route and win the round on that making the 2AR impossible. Key to fairness since you need a coherent strat to win the round.

5. Vote aff if I win a counter interp or meet the interp because theory and T nullify 6 minutes making the 1ar impossible if I have to beat back two layers in a 13-7 skew. And, I can’t read T on the neg so it’s the only way to make the layer reciprocal. This also means no neg RVIs because the negative has 6 minutes to beat back a 4 minute spread whereas the 1AR is time crunched between 7-6 minute speeches.

6. Neg must concede that aff theory comes before neg theory.  A. The aff has to reserve the right to collapse to one layer in the 1ar because it is too time crunched to win multiple layers.   B. The neg will always win the weighing debate because of the 6 minute 2nr.  The only way to give the aff even a chance of winning is to grant that their abuse story comes first.  Otherwise, the 2n can just sandbag 6 minutes of weighing.  Cross apply strat is key to fairness.

7. The neg must concede to the affirmative’s choice of role of the ballot for this round. Prefer this interp **A.** other interps allow the NC to introduce an entirely new layer that the 1AR cannot establish adequate footing on due to the 13-7 time skew of a 1AR restart, means we can’t engage under their new role of the ballot anyways **B.** only my interpretation permits substantive discussion since when the role of the ballot is contested, every single round becomes a procedural debate about what role of the ballot is preferable and **C.** switch side debate links turns reasons to prefer alternate roles of the ballot – my interp forces debaters to debate under different roles of the ballot increasing clash and depth because superficial responses aren’t made on multiple layers of the flow.

Constitutionality is key to credibility – violating the constitution proves that we’re not trustworthy. **Ginsburg** writes[[7]](#footnote-7)

Why might these issues of constitutional design vary across countries? I draw on the literature that treats constitutions as mechanisms for making political precommitments.56 A precommitment means “becoming committed, bound or obligated to some course of action or inaction or to some constraint on future action . . . to influence someone else’s choices.”57 Imagine a constitution written by a single political leader, seeking to establish legitimate authority. The politician can promise to behave in particular ways, for example, not to interfere with the rights of his or her citizens. But there is no reason for citizens to believe mere promises from their leader. A promise at Time 1 only has value if the promisee believes that it will be obeyed at Time 2. **The politician** thus **faces the problem of making** the **promise[s] credible.** This problem is particularly acute when the politician cannot predict the incentives he or she will face in the future.58 If costs and benefits vary in unpredictable ways, the politician’s promise to behave in the specified way may be less believable. To paraphrase Stephen Holmes, why should people believe their leader when sober, knowing that sometimes leaders can become drunk and behave quite differently?59 Facing this problem, a rational constitutional designer might realize that it makes sense to limit her own power, in order to obtain the consent of those she governs. **Democratic constitutions** can **help to serve this role.** As Sunstein has written: “Democratic constitutions operate as ‘precommitment strategies’ in which nations, aware of problems that are likely to arise, take steps to ensure that those problems will not arise or that they will produce minimal damage if they do.”60 **Constitutions help make** the **promises credible by imposing costs on those who violate promises.**61 **By tying their own hands, politicians actually** can **enhance their ownauthority.**

2 impacts.

a. International credibility solves multiple scenarios for extinction.

**Nye and Armitage 07**[[8]](#footnote-8)

Soft power is the ability to attract people to our side without coercion. Legitimacy is central to soft power. **If a** people or **nation believes American objectives to be legitimate, we are more likely to persuade them to follow our lead** without using threats and bribes. **Legitimacy can also reduce opposition to**—and the costs of—**using hard power when the situation demands.** Appealing to others’ values, interests, and preferences can, in certain circumstances, replace the dependence on carrots and sticks. Cooperation is always a matter of degree, and it is profoundly influenced by attraction…The information age has heightened political consciousness, but also made political groupings less cohesive. Small, adaptable, transnational networks have access to tools of destruction that are increasingly cheap, easy to conceal, and more readily available. Although the integration of the global economy has brought tremendous benefits, **threats such as pandemic disease and the collapse of financial markets are more distributed and more likely to arise without warning. The threat of** widespread physical harm to the planet posed by **nuclear catastrophe** has existed for half a century, though the realization of the threat **will become more likely as the number of nuclear weapons states increases.** The potential security challenges posed by **climate change raise[s]** the possibility of an entirely **new** set of **threats** for the United States **to consider**… **States** and non-state actors who improve their ability to draw in allies will gain competitive advantages in today’s environment. Those **who alienate potential friends will stand at greater risk.** China has invested in its soft power to ensure access to resources and to ensure against efforts to undermine its military modernization. **Terrorists depend on** their ability to attract **support from the crowd** at least as much as their ability to destroy the enemy’s will to fight.

b. Domestic credibility is key to solve crime. **Tyler 04**[[9]](#footnote-9)

One way to approach the relationship between the police and the public is to consider how **the public impacts** on **the effectiveness of the police in their efforts to combat crime** and maintain social order. Traditional discussions of the effective exercise of legal authority have focused on the ability of legal authorities to shape the behavior of the people within the communities they police. **The ability of the police** to secure compliance with their directives and with the law more generally-the ability **to be authoritative-is** widely identified as **one key indicator of their viability** as authorities (Easton1 975;Fuller 1971).**To be effective** as maintainers of social order, in other words, **the police must be widely obeyed** (Tyler 1990). This obedience must occur **both during personal encounters** between police officers and members of the public (Tyler and Huo 2002) **and in people's** everyday **law-related behavior** (Tyler 1990).

3. The US constitution is a worldwide model for rule of law. Current precedent is still key. **London 01** writes[[10]](#footnote-10)

Fourth, the United States possesses a sense of moral universalism that exists nowhere else. **When one talks about** some sort of example—**a model of** human rights, constitutionalism, subsidiarity, **rule of law**, and property rights—**the U**nited **S**tates **stands alone. It is the model. [For example]** Not long ago several **Hudson Institute scholars** had the opportunity to spend some time in Indonesia, and we **found that Indonesia does not turn** for its models **to China or Japan;** it looks to the United States. **The** new **Indonesian president** is very keen on establishing a form of federalism. What does he **look[s] to**? **The American Constitution.** Fifth and last, the rest of the world looks to the United States for answers. Very recently, an American deputy secretary of state said, “**Everyone’s crisis is America’s crisis**.” Why? **Because the world looks to the U**nited **S**tates **as its model.** As a consequence, there is no question that the United States will maintain its extraordinary leadership.

# Contention F/Ls and additional evidence

Sparf doesn’t negate – the court decided judges are not required to tell jurors about nullification, but it does not ban nullification. **Silverman:**

Steve Silverman “8 Jury Nullification Objections Rebutted” 2/4/14https://www.flexyourrights.org/8-jury-nullification-arguments-rebutted/

The *Tribune* and other **jury critics frequently cite** the 1895 **Supreme Court decision,**[***Sparf v. U.S.***](http://en.wikipedia.org/wiki/Sparf_v._United_States)**The court ruled that judges were not *required* to tell jurors about jury nullification. The ruling didn’t say that jurors didn’t have the power to nullify.** Nor did it say that judges *couldn’t* tell the jury about nullification; it simply said that they didn’t have to. This decision has led to the common practice by U.S. judges of penalizing criminal defense lawyers who try to present a nullification argument in front of the jury. Consequently, jury nullification is seen as a *de facto* power of juries. So unless you’re a citizen of New Hampshire, most jurors cannot rely on judges to inform them of this “secret” constitutional power.

overriding jury nullification would effectively be pursuing a second trial, contradicting the Double Jeopardy Clause, **Duane 2:**

Second, **the** roots of nullification also run deep into the (pg.7) **Double Jeopardy Clause. Even where the jury's verdict** of not guilty **seems indefensible, that clause prevents the State from pursuing** even the limited remedy of **a new trial. This rule**, by design, **gives juries the power** to "err upon the side of mercy"by entering "an unassailable but unreasonable verdict of not guilty." Jackson v. Virginia, 443 U.S. 307, 317 n.10 (1979).

legal tradition holds that juries make general decisions – which affirms their right to freely decide a verdict. **Duane 3:**

Finally, **the jury's power to nullify is protected by** our abiding "judicial **distaste**" **for special verdicts or interrogatories** to the jury in criminal cases. United States v. Oliver North, 910 F.2d 843, 910-11 (D.C. Cir. 1990). Unlike in civil cases, where such devices are routinely employed, in criminal cases **it has frequently been held to be error to ask a jury to return anything but a general verdict of guilty or not guilty.** United States v. McCracken, 488 F.2d 406, 418-419 (5th Cir. 1974) (collecting cases). **This rule is designed to safeguard the jury's power "to arrive at a general verdict without having to support it by reasons or by a report of its deliberations,"** and to protect its historic power to nullify or temper rules of law based on the jurors' sense of justice as conscience of the community. Id.; United States v. Spock, 416 F.2d 165, 181-82 (1st Cir. 1969). **The jury is given "a general veto power, and this power should not be attenuated by requiring the jury to answer in writing a detailed list of questions or explain its reasons." United States v. Wilson, 629 F.2d 439, 443 (6th Cir. 1980).** Although the issue is far from settled, a powerful argument can be made that this rule "is of constitutional dimensions," and a direct corollary of the Sixth Amendment's protection of the jury's power to nullify. Wayne LaFave & Jerold Israel, Criminal Procedure § 24.7(a) (2d ed. 1992). These constitutional rules, in combination, give a criminal jury the inherent discretionary power to "decline to convict," and insure that such "discretionary exercises of leniency are final and unreviewable." McCleskey v. Kemp, 481 U.S. 279, 311 (1987). This state of affairs does not even have a rough parallel in civil cases, where the Seventh Amendment right to a "trial by jury" does not preclude judges from granting summary judgment, directed verdicts, and new trials. (In effect, although both amendments are written quite similarly, the Supreme Court has interpreted the Sixth Amendment to give criminal defendants a right to a jury and a trial; the Seventh Amendment, where it applies, only gives civil litigants the right to a jury if there is a trial.**) The existence of a criminal jury's power to nullify is currently as well settled as any other rule of constitutional law. It is a cornerstone of American criminal procedure.**

Framers of the Constitution like Alexander Hamilton stressed the importance of jury independence, **Freedman:**

Monroe H., former prof and dean @ Hofstra Law School, visiting prof @ Georgetown, a pioneer in legal ethics, chair of a ACLU chapter, LLM from Harvard Law, “Jury Nullification: What it is and how to do it ethically,” 42 Hofstra L. Rev. 1125 2013-2014 [Premier, Premier Debate Today, Sign-Up Now]

As we have seen, **even the Supreme Court** in Sparf **acknowledged** that theconstitutional guarantee of trial by jury was motivated by the "popular importance" of "**the independence of the jury in law** as well as in fact" at the time the Constitution was adopted.36 References to trial by jury during that period, therefore, incorporated this understanding as an aspect of trial by jury. In discussing the guarantee of trial by jury in criminal cases, 37 Alexander Hamilton wrote in THE FEDERALIST that both the friends and adversaries of the proposed Constitution concurred in "the value [that] they set upon the trial by jury. , 3 " "Or," he added, "if there is any difference between them, it consists in this; the former regard it as a valuable safeguard to liberty, the latter represent it as the very palladium of free government., 39 **Hamilton himself saw the jury as "a barrier to** the **tyranny** of popular magistrates in a popular government," **preventing "arbitrary methods of prosecuting** pretended offenses, **and** arbitrary **punishments** upon arbitrary convictions," which are the "great engines of judicial despotism."40 That is, Hamilton recognized that the jury in a criminal case is a safeguard against "judicial despotism," preventing both unjust convictions and unjust punishments.41

1. http://vbriefly.com/side-bias/ [↑](#footnote-ref-1)
2. http://www.stanford.edu/~bobonicha/dictionary/dictionary.html Abbreviated Dictionary of Philosophical Terminology An introduction to philosophy Stanford University [↑](#footnote-ref-2)
3. Merriam Webster Dictionary, “affirm” [↑](#footnote-ref-3)
4. “Gifted Tongues: High School Debate and Adolescent Culture” (2001)Gary Alan Fine.

   “Of those who had selected a career, a plurality (40 percent), planned to become lawyers.”

   Survey of over 400 students from 300 schools – 150 with people going to NFLs and 150 random not going to NFLs [↑](#footnote-ref-4)
5. Do Debaters Make Better Lawyers?¶ 10/03/2013 James Marshall Crotty [↑](#footnote-ref-5)
6. Schapiro, Tamar (Stanford University). Three Conceptions of Action in Moral Theory, Noûs 35 (1):93–117, 2001. [↑](#footnote-ref-6)
7. Tom Ginsburg (Professor of Law and Political Science, University of Illinois, Urbana-

   Champaign). “LOCKING IN DEMOCRACY: CONSTITUTIONS, COMMITMENT, AND INTERNATIONAL LAW.” 2006. <http://works.bepress.com/tom_ginsburg/12/> [↑](#footnote-ref-7)
8. Joseph Nye (University Distinguished Service Professor at Harvard University, and previous dean of Harvard University's John F. Kennedy School of Government) and Richard Armitage (13th United States Deputy Secretary of State, the second-in-command at the State Department, serving from 2001 to 2005), “CSIS Reports – A Smarter, More Secure America”, 11/6, 2007 <http://www.csis.org/component/option,com_csis_pubs/task,view/id,4156/type,1/> [↑](#footnote-ref-8)
9. Professor Of Psychology at New York University. Enhancing Police Legitimacy Tom R. Tyler *Annals of the American Academy of Political and Social Science* , Vol. 593, To Better Serve and Protect: Improving Police Practices (May, 2004), pp. 84-99 [↑](#footnote-ref-9)
10. Herbert I. London (President of the Hudson Institute and Profesor Emeritus at NYU). “The Enemy Within.” 1 April 2001. [↑](#footnote-ref-10)